# Tan Chee Kern v Public Prosecutor

COURT OF APPEAL (PUTRAJAYA) – CRIMINAL APPEAL NO B–05–42 OF 2001

ALAUDDIN, ABDUL AZIZ AND NIK HASHIM JJCA

24 MARCH 2004

*Criminal Procedure — Sentence — Imprisonment for life – Appellant guilty of exhibiting a firearm in the commission of a scheduled offence of robbery — Appellant sentenced to imprisonment for life and six strokes of the rotan — Appellant appealed against sentence of imprisonment for life — Appellant urged court to impose a sentence of 20 years' imprisonment — Meaning of 'imprisonment for life' — Firearms (Increased Penalties) Act 1971 s 4*

The appellant was originally charged with an offence punishable under s 3 of the Firearms (Increased Penalties) Act 1971 ('the Act'). However, at the close of the prosecution case, the trial judge amended the charge to one of exhibiting a firearm in the commission of a scheduled offence of robbery under s 4, an offence punishable with imprisonment for life and whipping with not less than six strokes. The appellant was called upon to enter his defence. At the conclusion of the trial the appellant was found guilty and was accordingly convicted and sentenced to imprisonment for life and six strokes of the rotan. The appellant appealed against the sentence only and urged the court to impose a sentence of 20 years' imprisonment instead of imprisonment for natural life.

**Held**, dismissing the appeal and affirming the sentence of the High Court:

The definition of 'imprisonment for life' in s 2 of the Act is manifestly clear in its terms. Therefore, in respect of the offence of which the appellant was convicted, the sentence of 'imprisonment for life' under s 4 of the Act means imprisonment for the duration of the whole life of the appellant. The appellant's plea was a matter for the Pardons Board (see para 5).

[**Bahasa Malaysia summary**

Perayu pada asalnya telah dituduh kerana melepaskan tembakan daripada senjata api dengan niat untuk menyebabkan kematian atau kecederaan, yang merupakan kesalahan yang boleh dihukum di bawah s 3 Akta Senjata (Penalti Lebih Berat) 1971 ('Akta tersebut'). Walau bagaimanapun, setelah kes pendakwaan ditutup, hakim bicara telah meminda pertuduhan kepada menunjukkan senjata semasa melakukan kesalahan menurut jadual iaitu merompak dibawah s 4, yang merupakan kesalahan yang boleh dihukum penjara seumur hidup dan disebat tidak kurang daripada enam sebatan. Pada akhir perbicaraan, perayu telah didapati bersalah dan disabitkan dan dihukum penjara seumur hidup dan enam kali sebatan rotan. Perayu hanya merayu terhadap hukuman dan memohon agar mahkamah mengenakan hukuman penjara 20 tahun dan bukan penjara selama tempoh hayatnya.

**Diputuskan**, menolak rayuan tersebut dan mengesahkan hukuman Mahkamah Tinggi:

Definisi 'imprisonment for life' dalam s 2 Akta tersebut adalah amat jelas maksudnya. Maka, berkenaan dengan kesalahan yang telah disabitkan terhadap perayu, hukuman 'imprisonment for life' di bawah s 4 Akta tersebut membawa maksud penjara untuk jangka masa seumur hidup perayu. Rayuan perayu adalah perkara bagi Lembaga Pengampunan (lihat perenggan 5).]

**Notes**

For cases on sentence of imprisonment for life, see 5 *Mallal's Digest* (4th Ed, 2001 Reissue) paras 3199–3201.
For sentences of imprisonment, see 18 *Halsbury's Laws of Malaysia*, paras [310.476] – [310.479].

**Legislation referred to**

Arms Act 1960 s 2
Criminal Justice Act 1953 s 3
Firearms (Increased Penalties) Act 1971 ss 2, 3, 4

*Appellant in person.*
*Roslan bin Mat Nor for the Public Prosecutor.*

**Nik Hashim JCA** (delivering judgment of the court):

**[1]** The appellant was originally charged for discharging a firearm with intent to cause death or harm, an offence punishable under s 3 of the Firearms (Increased Penalties) Act 1971 ('the Act'). The only penalty prescribed by the Act is death. However, at the close of the prosecution case, the learned trial judge amended the charge to one of exhibiting a firearm in the commission of a scheduled offence of robbery under s 4, an offence punishable with imprisonment for life and whipping with not less than six strokes, and called upon the appellant to enter his defence. The appellant elected to give an unsworn statement from the dock and in the defence, he said that on the day in question he went to a scrap iron shop to ask for money from an Indian man. He had a quarrel with him. Before that, he had swallowed some pills. As a result, he could not recollect what had happened. However, he admitted he had a pistol but he could not remember discharging it. He also said that he was beaten by the people until he fell unconscious. At the conclusion of the trial, the learned judge ruled that the defence had failed to create a reasonable doubt in the prosecution case and thus found the appellant guilty under the amended charge. The appellant was accordingly convicted and sentenced to imprisonment for life and six strokes of the rotan.

**[2]** The appellant appealed against the sentence only and urged the court to impose a sentence of twenty years imprisonment instead of imprisonment for natural life. We heard the appeal on 26 January 2004. We dismissed his appeal and affirmed the sentence imposed by the High Court.

**[3]** The punishment under s 4 of the Act is imprisonment for life and with whipping with not less than six strokes. The imposition of six strokes is the minimum prescribed by the Act and that was the sentence meted out by the High Court. In the circumstances, we shall deal only with whether the imprisonment for life imposed by the High Court could be substituted with twenty years imprisonment. It is noted that under s 3 of the Criminal Justice Act 1953 (Act 345) ('the CJA'), 'imprisonment for life' means an imprisonment for twenty years.

**[4]** But, under s 2 of the Act 'imprisonment for life' means, notwithstanding s 3 of the CJA and any other written law to the contrary, imprisonment for the duration of the natural life of the person sentenced. A similar definition of 'imprisonment for life' is provided under s 2 of the Arms Act 1960.

**[5]** The definition of 'imprisonment for life' in s 2 of the Act is manifestly clear in its terms. Therefore, in respect of the offence of which the appellant was convicted, the sentence of 'imprisonment for life' under s 4 of the Act means imprisonment for the duration of the whole life of the appellant. Thus, we were unable to entertain the appellant's plea to convert the 'imprisonment for life' to that of imprisonment for twenty years. Indeed, the appellant's plea is a matter for the Pardons Board.

**[6]** Accordingly, we dismissed the appeal and affirmed the sentence of the High Court.

*Appeal dismissed and sentence of High Court affirmed.*

Reported by R Lalitha